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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 509

FRANK MORGAN, ADMINISTRATOR OF THE ESTATE OF WILLIAM NICHOLAS,

Petitioner.

vs.

FRANK T. HINES, AS ADMINISTRATOR OF VETERANS' AFFAIRS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

WARREN E. MILLER,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

Petitioner, Frank Morgan, administrator of the estate of William Nicholas respectfully prays certiorari to review a decision of the United States Court of Appeals for the District of Columbia, affirming a final order (R. 13) of the District Court sustaining respondent's demurrer and dismissing his petition for a writ of mandamus.

Petitioner asserts the court below has:

1. Decided a question of general importance of substance relating to certain statutes of the United States, which has not been, but should be, settled by this Court;

2. Has not given proper application to rights conferred upon petitioner by the Fifth Amendment to the Constitution of the United States, and

3. Has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Summary Statement of the Matter Involved.

This case is for consideration of the appropriate pleadings in a mandamus suit filed July 3, 1933, upon the question of law presented by the ruling of the court below upon respondent's demurrer (R. 12) to petitioner's amended replication (R. 8-12) when it affirmed (R. 21) the action of the District Court (R. 13) in sustaining respondent's demurrer and dismissing the petition.

Petitioner, upon being appointed administrator of the estate of William Nicholas, deceased on March 7, 1932 (R. 3) filed claim with the United States Veterans' Administration for the payment of insurance benefits (R. 1) due his decedent's estate, the decedent having died on September 4, 1926 (R. 10) while his insurance was in force. On October 27, 1932 the Insurance Claims Council of the United States Veterans' Administration (R. 10) found as a fact, pursuant to authority duly delegated to it by regulations duly promulgated in accordance with law that William Nicholas, hereinafter referred to as the insured was totally and permanently disabled within the meaning of his war risk insurance contract from December 5, 1918, the date of his discharge from the military service of the United States with a surgeon's certificate of disability. This body was the only agency charged by law and regulations duly promulgated pursuant to law with the responsibility of determing the existence of total and permanent disability for insurance purposes. Again on September 25, 1933 and again on Sep-

tember 15, 1934 (R. 10) the Insurance Claims Council affirmed its previous action, holding the evidence sufficient to constitute total and permanent disability while this insurance was in force; (R. 1). *No Appeal was taken from this decision.* (R. 9).

However, the Administrator of Veterans' Affairs refused to allow this claim to be paid (R. 10-11).

Petitioner, having been appointed administrator on March 7, 1932 (R. 3) could not timely file claim under Section 19, World War Veterans' Act, as amended (c. 849, 46 Stat. 991) so he filed suit (R. 12) to compel respondent to pay insurance benefits.

Respondent's demurrer filed June 9, 1938 alleged the petition and amended replication failed to recite proper grounds for the issuance of a writ of mandamus and that the petition sought to control respondent's exercise of discretion.

The District Court on January 19, 1939 dismissed the petition. The United States Court of Appeals for the District of Columbia on July 15, 1940 affirmed the judgment of the District Court.

Basis of the Court's Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked under Section 240 of the Judicial Code as amended by the Act of February 13, 1925 (Chap. 225, 43 Stat. 938, 28 U. S. C. A. 347) and Par. 5 (b) and 5 (c) of Rule 38 of this Court.

The order of the United States District Court was entered January 19, 1939 (R. 13) the opinion of the United States Court of Appeals for the District of Columbia upon appeal timely prosecuted, was rendered on July 15, 1940 (R. 18-21).

Questions Presented.

1. Did Section 19, World War Veterans' Act, 1924 as amended deprive petitioner of his right to file a common law action of mandamus authorized by Sections 211 to 220 inclusive, Title 24 of the District of Columbia Code as consolidated and codified to March 4, 1929 in force at the time this suit was filed on July 3, 1935 when no concurrent right existed to file suit under said Section 19 at the time such mandamus suit was filed?

2. Were petitioner's rights to war risk insurance as protected by the 5th Amendment to the Constitution of the United States violated?

3. Could the court below properly consider, upon Respondent's demurrer to petitioner's replication, the affirmative defense set forth by Respondent in his answer?

Reasons Relied Upon for Allowance of Writ.

Petitioner shows that the court below in its opinion herein complained of misconstrued certain statutes of the United States, to-wit, the effect of Section 19, World War Veterans' Act, 1924 as amended, (c. 849, 46 Stat. 991) upon Sections 211 to 220 inclusive, Title 24 of the Code of the District of Columbia as consolidated and codified to March 4, 1929, did not properly apply the Fifth Amendment to the Constitution of the United States or the decision of this Honorable Court in the case of *Lynch* and *Wilner* vs. *United States*, 292 U. S. 571, 78 L. Ed. 1434; has so far sanctioned a departure from the accepted and usual cause of judicial proceedings as to call for an exercise of this court's power of supervision, and has decided an important question of Federal law which has not been, but should be, settled by this court.

Unless the remedy of mandamus is available here, this petitioner is without redress respecting his vested property rights because suit under Section 19, World War Veterans' Act, 1924 as amended could never have been filed by this petitioner because at the time petitioner was appointed administrator of this estate on March 7, 1932 (R. 3), the time for filing claim in order to sue under Section 19, World War Veterans' Act, 1924 as amended (c. 849, 46 Stat. 991) had already expired on July 3, 1931.

Administrative consideration of claims, however, is not limited by statute so far as the date of filing such claims is concerned, the statute of limitations applying only to the bringing of suit. *Jenkins* v. *United States,* 86 F. (2d) 123.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Section 19, World War Veterans' Act Does Not Preclude the Remedy of Mandamus.

The Court of Appeals here erroneously held (R. 20) that the remedy provided by Section 19, World War Veterans' Act is exclusive and that mandamus will not lie to compel payment of insurance benefits. This has the effect of depriving petitioner of a valuable property right without due process of law. There is nothing contained in Section 19, World War Veterans' Act, 1924 as amended July 3, 1930, 46 Stat. 992, (Title 38, Section 445 U. S. C.) which warrants the erroneous conclusion of the court below that the remedy provided by Section 19 is exclusive. That section in no way repealed, either directly or by implication this petitioner's right to the common law remedy of mandamus authorized by Sections 211 to 220 inclusive, Title 24 of the Code of the District of Columbia, as consolidated and codified to March 4, 1929, which statutes of the United States were in full force and effect when this petition was filed on July 3, 1935. (These Sections will be found in the Appendix).

This decision of the court below was based upon the erroneous conclusion that the remedy prescribed by Section 19 prohibited mandamus proceedings. In this respect it clearly misconstrued the applicable statutes, to-wit, Section 19, World War Veterans' Act, 1924 as amended in holding in effect that said Section repealed or nullified the above mentioned statutes authorizing mandamus action.

II.

Were Petitioner's Rights to War Risk Insurance as Protected by the Fifth Amendment to the Constitution of the United States Violated?

Sufficient facts are alleged in the petition (R. 1-3) and amended replication (R. 8-12) to justify characterising the action of the respondent as arbitrary, capricious and contrary to law. By depriving petitioner of his right to mandamus a right to judicial review of executive action here has been destroyed; and without legal basis.

On November 1, 1931 the following regulation was promulgated by respondent:

> "3204. APPEAL FROM DECISION BY INSURANCE CLAIMS COUNCIL.—Where the insurance claims council finds that permanent and total disability does not exist as alleged, such denial shall be final. However, the veteran or his representative shall have the right of appeal to the administrator from any finding made pursuant to the authority contained in sections 3200 to 3203 providing such appeal be exercised within sixty days from the date of receipt of notice of the final action of the council. Such appeal must be in writing and otherwise comply with the regulations governing appeals to the administrator".

In the cases of *Lynch* and *Wilner* v. *United States*, 292 U. S. 571, 78 L. Ed. 1434, involving war risk insurance, that Court aptly said:

> "The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a State or the United States. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment. *United States* v. *Central P. R. Co.*, 118 U. S. 235, 238, 30 L. Ed. 173, 174, 6 S. Ct., 1038; *United States*

> v. *Northern P. R. Co.*, 256 U. S. 51, 64, 67, 65, L. Ed. 825, 828, 830, 41 S. Ct. 439. When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals. That the contracts of war risk insurance were valid when made is not questioned. As Congress had the power to authorize the Bureau of War Risk Insurance to issue them, the due process clause prohibits the United States from annulling them, * * *"

"Section 402 of the original War Risk Insurance Act of October 6, 1917 (40 Stat. 400) required the Director to 'promptly determine upon and publish the full and exact terms and conditions of such contract of insurance.' The first paragraph of the form of policy issued (which appears on page 39 of a brief filed by the Veterans' Administration in the United States Supreme Court, October Term 1934, in the case of *Madison Miller, Jr.* v. *United States*, No. 342) states:

> The United States of America, Treasury Department, Bureau of War Risk Insurance
>
> "Under the authority granted by Congress in an act amending 'An act entitled "An act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September 2, 1914, and for other purposes,' approved October 6, 1917, *and subject in all respects* to the provisions of such act, of any amendments thereto, and *of all regulations thereunder, now in force or hereafter adopted, all of which, together with this policy, the application therefor, and the terms and conditions published under authority of the act, shall constitute the contract:*" (Italics supplied).

It will be thus seen that the regulations of the Veterans Administration constituted a part of the contract here under consideration.

Authorized regulations pertaining to war risk insurance form part of the contract, and are binding on both the government and the insured. They have the force of law and are binding on the courts. *White* v. *United States*, 270 U. S. 175, 70 L. Ed. 530, 46 S. Ct. 274; *United States* v. *Cole* (C. C. A. 6th), 45 F. (2d) 339; *Ross* v. *United States* (C. C. A. 5th) 49 F. (2d) 541; *Bartee* v. *United States* (C. C. A. 6th), 60 F. (2d) 247, *Stevens, U. S.* v., 64 F. (2d) 853 (C. C. A. Minn.), April 1933.

An administrative regulation is subject to the rules of law equally with a statute. When promulgated it must be followed by all. To hold otherwise would work an injustice and permit an administrative officer to render decisions according to his own whims.

Procedural regulations like procedural statutes, should be given a construction if possible which will preserve the essentials of harmony and consistency.

Section 13 of the War Risk Insurance Act, as amended May 20, 1918, (Chap. 77, 40 Stat. at L. 555) confers upon the Director of the Bureau authority to make such rules and regulations, not inconsistent with the provisions of the act, as may be necessary or appropriate to carry out its purposes. Under that provision, a regulation was issued, July 1, 1931 [1] conferring exclusive jurisdiction on the In-

[1] "By virtue of the authority contained in Section 1 of Public No. 536, 71st Congress, 'An Act to authorize the President to consolidate and coordinate governmental activities affecting war veterans', the following order is hereby promulgated for the guidance of all concerned:

1. There is established, effective July 1, 1931, in the office of the Assistant Administrator in charge of Finance and Insurance, a Division of Insurance, under the control and direction of a Director of Insurance, responsible for the proper conduct of all activities under his charge to the Assistant Administrator. The Director will have jurisdiction over and be solely responsible for:

(a) The administration of the provisions of Title III of the World War Veterans' act, 1924, relative to insurance, and the adjudication of claims for benefits thereunder; * * *

* * * * * * *

surance Claims Council in rendering decisions in all insurance claims. Respondent reserved to himself no affirmative authorization in this regulation to appeal to himself from a decision of the Insurance Claims Council granting insurance benefits.

The Insurance Claims Council on three occasions (R. 9-10) found the insured to have been permanently and totally disabled on December 5, 1918. These findings and judgments were binding and conclusive upon this respondent, there being no regulations authorizing an appeal except by the claimant from the said decisions. They were in claimant's favor and he had no reason to appeal, and no appeal was taken.

After the decisions were made they were as binding and conclusive upon the appellee as if judgment had been awarded by a court. The situation here is similar to that which exists when a decision is rendered by a Federal District Court in favor of one party. A Circuit Court of Appeals cannot upon its own motion reach down and without any affirmative action having been taken on the part of the losing litigant call a case up to its jurisdiction and then because it does not like the decision of the lower court, reverse such decision. Just as a decision of the District Court if unappealed from is final, so the decision of the Insurance Claims Council here is final.

Congress doubtless had in contemplation situations such as this when it enacted the following provisions of Section 11 (a), Title 38, U. S. C. (July 3, 1930, c. 863, sec. 2, 46 Stat. 1016):

---

5. Insurance Claims Council.

The Insurance Claims Council will be under a Chief, who will be responsible for the current and efficient conduct of the following functions:

(a) Preparing for decision and adjudicating all claims for insurance benefits on account of permanent and total disability, or total disability under Section 311, World War Veterans' Act as amended. * * *"

> "All final decisions or orders of any division, bureau, or board in the Veterans' Administration shall be subject to review, *on appeal,* by such administrator." (Italics supplied.)

There were no valid regulations authorizing an appeal by any one other than a claimant, and no proper person authorized by regulations appealed in the instant case. Therefore, the action taken by the respondent herein was usurped and without authority of law.

Petitioner's right to insurance became fixed and vested upon the decision of the Insurance Claims Council. This was a valuable property right and could not be destroyed by the arbitrary action taken by appellee here. Clearly, the only person to whom an appeal could be taken from a decision of the Insurance Claims Council, allowing a claim for insurance, would be an appeal from a decision of a duly constituted body such as the Insurance Claims Council here, would mean that the appellee could appeal to himself. He and he alone would be the higher court to whom the appeal would be taken, and we would find this appellee acting as judge and jury as well as a prosecutor of the appeal. Clearly, this practice, if allowed and sanctioned by the Court, would be most pernicious and contrary to the established principles of our jurisprudence. There was no regulation authorizing an appeal by any person other than the claimant or his representative until March 12, 1934. On that date the following regulation was issued.

> 1. Veterans Regulation No. 2 (a), Part II, paragraph VI, provides that application for review on appeal may be made by such officials of the Veterans' Administration as may be designated by the Administrator of Veterans' Affairs.
>
> 2. Pursuant to this authority the manager of a Regional Office or of a Facility having regional office

activities, or the adjudication officer are authorized to file an appeal in any case within thirty days from the date of the initial review or determination, whichever is the later date.

3. An Assistant Administrator, the Solicitor, the Director of the Veterans' Claim Service, the Director of the Widows' and Dependents' Claims Service, the Chief of the Claims Service, the Director of Insurance, Chief, Life Insurance Claims Division, or Chief, Insurance Claims Council, are authorized to file an appeal in any case within six months from the date of mailing of notice of the result of initial review or determination, or six months from the date of the result of initial review or determination, whichever is the later date.

The issuance of Instruction No. 10, effective on March 12, 1934, demonstrates that appellee felt it necessary to promulgate a regulation in order for an appeal to be taken by an official in the Veterans' Administration. Instruction No. 10 permitted an appeal by an administrative official to the administrator, not an appeal by the administrator to himself, as was attempted to be done in the instant case.

III.

In Ruling on Respondent's Demurrer the Court Could Not Properly Consider Facts Set Forth in Respondent's Own Answer.

Petitioner maintains the allegations of the petition (R. 1-4) and amended declaration (R. 8-12) are the only pleadings which the court below should have considered in determining whether petitioner made out a prima facie case in the light of respondent's demurrer (R. 12) to the amended replication (R. 8-12). The court below, however, in reaching its decision that this petitioner's pleadings did not make out a case gave consideration, as will be observed

from its remarks set forth in paragraph two of footnote four (R. 18-19), to facts alleged in respondent's own answer. This, petitioner maintains, was improper because the lower court thus erroneously gives to the respondent the right to simultaneously deny and set up new matter in the pleadings at the same time he exercises the right to demur. The court below erroneously permitted respondent's demurrer to operate as an admission of the truth of the facts set forth in respondent's own answer. This is such a departure from the fundamental accepted and usual course of judicial proceedings as to merit the exercise of this Court's power of supervision.

It is a universal rule that a demurrer is an admission of the truth of all the facts properly averred *in the pleading demurred to* (21 R. C. L. 506). (Italics supplied.) But petitioner is aware of no rule of law, and firmly believes there is none which permits a demurrant to simultaneously bring before the court for consideration on demurrer, affirmative facts pleaded by such demurrant.

The rule is that mandamus, being in the nature of a civil action, is governed by the same rules of pleading and practice as are prescribed for the conducting of other actions at law (18 R. C. L. 339).

Conclusion.

It is respectfully submitted that this Honorable Court should grant petitioner's application for a writ of certiorari.

Respectfully submitted,

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Attorney for Petitioner.

October 15, 1940.

APPENDIX.

Title 24 of the Code of the District of Columbia as consolidated and codified to March 4, 1929, provides:

"PART II. MANDAMUS.

211. How APPLIED FOR. All applications for granting writs of mandamus shall be commenced by petition, verified by affidavit of the applicant, setting forth fully the ground of his application. (Mar. 3, 1901, 31 Stat. 1390, c. 854, sec. 1273.)

212. RULE ON DEFENDANT. Upon the filing of such petition the court may lay a rule requiring the defendant therein named to show cause, within such time as the court may deem proper, why a writ of mandamus should not issue as prayed, a copy of which rule shall be served upon such defendant by a day to be therein limited. (Mar. 3, 1901, 31 Stat. 1390, c. 854, sec. 1274.)

213. DEFENDANT'S ANSWER. The defendant, by the day named in such order, unless for cause shown the court shall extend the time, shall file an answer to such petition, fully setting forth all the defenses upon which he intends to rely in resisting such application, which shall be verified by his affidavit. (Mar. 3, 1901, 31 Stat. 1390, c. 854, sec. 1275.)

214. PLEADINGS AND FURTHER PROCEEDINGS. The petitioner may plead to or traverse all or any of the material averments set forth in said answer, and the defendant shall take issue or demur to said plea or traverse within five days thereafter unless for cause shown, the court shall extend the time; and such further proceedings shall thereupon be had in the premises for the determination thereof as if the petitioner had brought an action for a false return. (Mar. 3, 1901, 31 Stat. 1390, c. 854, sec. 1276; June 30, 1902, 32 Stat. 543, c. 1329.)

215. TIME OF TRIAL OF ISSUE. If issue shall be joined on such proceedings, the same shall stand for trial at as early a day as the court shall appoint. (Mar. 3, 1901, 31 Stat. 1390, c. 854, sec. 1277.)

216. TRIAL. Such issues shall be tried by a jury if both parties in writing require it, otherwise they shall be heard and determined by the court; and in case a verdict shall be found for the petitioner, or if the court upon hearing determine for the petitioner, or judgment be given for him upon demurrer or for want of a plea, such petitioner shall thereupon recover his damages and costs as he might have done in an action for a false return, to be levied by execution, and a peremptory writ of mandamus shall be granted thereon without delay against the defendant. (Mar. 3, 1901, 31 Stat. 1390, c. 854, sec. 1278.)

217. JUDGMENT FOR DEFENDANT. If judgment shall be given for the defendant he shall recover his costs of suit, to be levied in the manner aforesaid. (Mar. 3, 1901, 31 Stat. 1391, c. 854, sec. 1279.)

218. DEFENDANT'S DEFAULT; GRANTING OF WRIT. If the defendant shall neglect to file his answer to the petition by the day named in the order of the court, after being served with notice thereof, the said court shall thereupon proceed to hear the said petition *ex parte*, within five days thereafter, and if it shall be of opinion that the facts and law of the case authorize the granting of a mandamus as prayed, it shall thereupon without delay order a peremptory mandamus to issue, and shall also adjudge to the petitioner his costs of suit. (Mar. 3, 1901, 31 Stat. 1391, c. 854, sec. 1280.)

219. SAME; DENIAL OF WRIT. If the court shall, upon such *ex parte* hearing, be of opinion that the facts and law of the case do not authorize the granting of a mandamus, it shall dismiss such petition with costs. (Mar. 3, 1901, 31 Stat. 1391, c. 854, sec. 1281.)

220. APPEAL. In case of an appeal by the defendant the court shall fix the penalty of the appeal bond necessary to be given to stay the execution or enforcement of the order appealed from. (Mar. 3, 1901, 31 Stat. 1391, c. 854, sec. 1282.)

Section 19 of the World War Veterans' Act, approved June 7, 1924 (c. 320, Sec. 19, 43 Stat. 612), 38 U. S. C. A.

445 (See Cumulative Annual Pocket Part), the legislative history of which is reflected by the references to the various statutes at large, at the end of the quotation, provides, in pertinent part, as follows:

> In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the Veterans' Administration and any person or persons claiming thereunder, an action on the claim may be brought against the United States, either in the District Court of the United States for the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. * * *
>
> No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after July 3, 1930, whichever is the later date, and no suit on United States Government life (converted) insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided*, That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded: *Provided further*, That this limitation is suspended for the period elapsing between the filing in the Veterans' Administration of the claim sued upon and the denial of said claim by the Administrator of Veterans' Affairs. * * * (June 7, 1924, c. 320, sec. 19, 43 Stat. 612; Mar. 4, 1925, c. 553, Sec. 2, 43 Stat. 1302; May 29, 1928, c. 875, sec. 1, 45 Stat. 964; July 3, 1930, c. 849, sec. 4, 46 Stat. 992; July 3, 1930, c. 863, secs. 1, 2, 46 Stat. 1016; June 7, 1934, c. 426, 48 Stat. 926; June 25, 1936, c. 804, 49 Stat. 1921.)

Section 17 of the Economy Act, Public #2, 73rd Congress (c. 48 Stat. 11) 38 U. S. C. A. 717 provided:

> " * * * all laws granting or pertaining to yearly renewable term insurance are hereby repealed * * *"

Section 20, Public 78, 73rd Congress (48 Stat. 302) 38 U. S. C. A. 445-B provided:

"Notwithstanding the provisions of section 17, title I, Public Numbered 2, Seventy-third Congress, any claim for yearly renewable term insurance on which premiums were paid to the date of death of the insured and any claim for pension, compensation allowance, or emergency officers' retirement pay under the provisions of laws repealed by said section 17 wherein claim was duly filed prior to March 20, 1933, may be adjudicated by the Veterans' Administration on the proofs and evidence received by the Veterans' Administration prior to March 20, 1933, and any person found entitled to the benefits claimed shall be paid such benefits in accordance with and in the amounts provided by such prior laws:"

Section 35, Public #141, 73rd Congress, provides:

"Sec. 35. That notwithstanding the provisions of section 17 of title I of an Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, and section 20 of an Act entitled "An Act making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices, for the fiscal year ending June 30, 1934, and for other purposes", approved June 16, 1933, any claim for yearly renewable term insurance under the provisions of laws repealed by said section 17 wherein claim was duly filed prior to March 20, 1933, and on which maturity of the insurance contract had been determined by the Veterans' Administration prior to March 20, 1933, and where payments could not be made because of the provisions of the Act of March 20, 1933, or under the provisions of the Act of June 16, 1933, may be adjudicated by the Veterans' Administration, and any person found entitled to yearly renewable term insurance benefits claimed shall be paid such benefits in accordance with and in the amounts provided by such prior laws."

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 509

FRANK MORGAN, Administrator of the Estate of William Nicholas,

Petitioner,

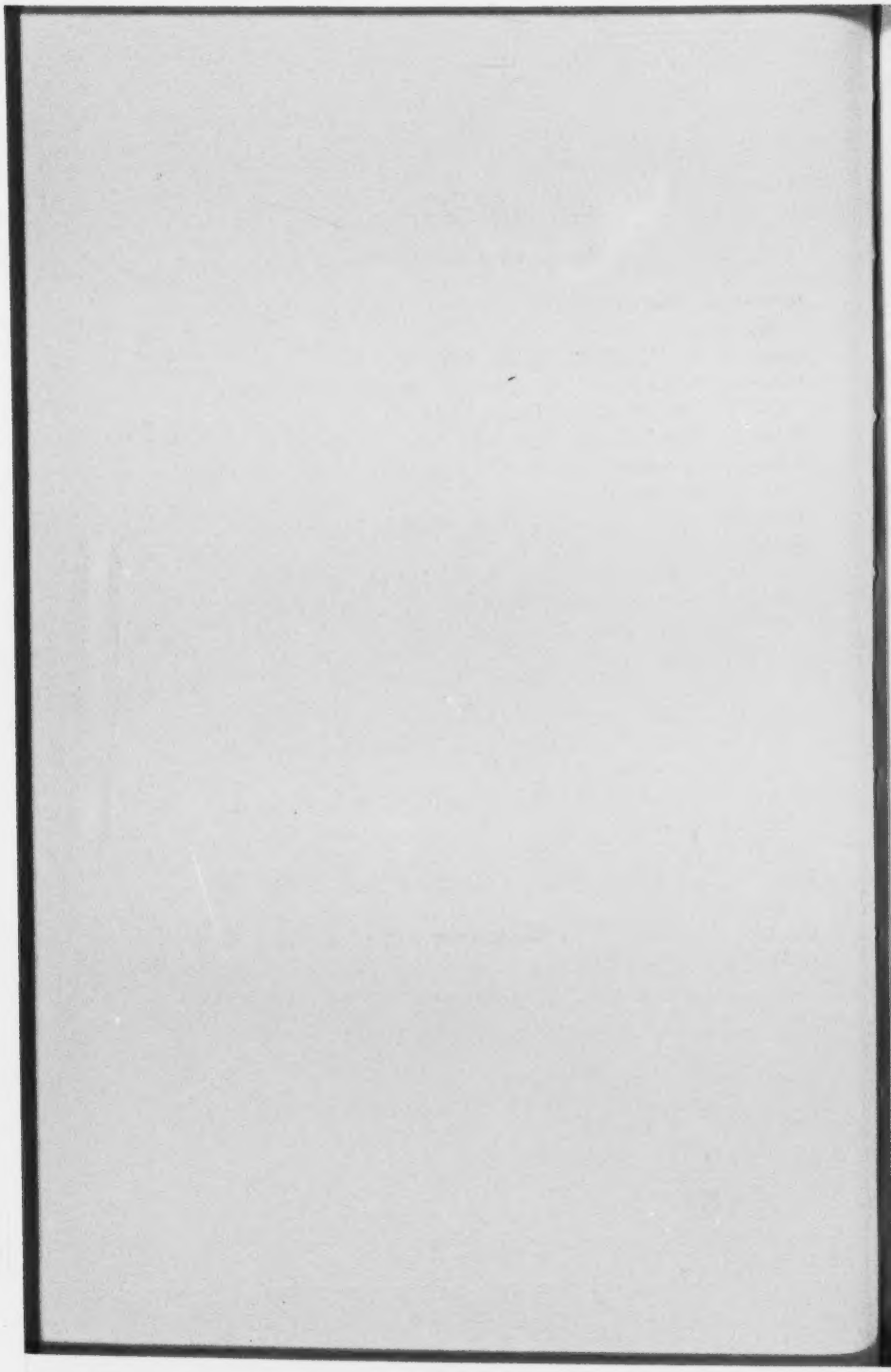
vs.

FRANK T. HINES, as Administrator of Veterans' Affairs.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

REPLY BRIEF OF PETITIONER TO RESPONDENT'S BRIEF IN OPPOSITION.

Warren E. Miller,
Counsel for Petitioner.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 509

FRANK MORGAN, Administrator of the Estate of William Nicholas,

Petitioner,

vs.

FRANK T. HINES, as Administrator of Veterans' Affairs.

REPLY BRIEF OF PETITIONER TO RESPONDENT'S BRIEF IN OPPOSITION.

Respondent on page 10 of Brief in Opposition states that petitioner's suit appears to be merely an effort to escape the bar of limitations which had fallen prior to the filing in the Veterans' Administration of the claim upon which he seeks to recover.

Both respondent and the court below lose sight of the fact that at no time did a remedy exist whereby this petitioner could file a suit under Section 19, World War Veterans' Act, 1924, as amended July 3, 1930 (46 Stat. 929-Title 38, U. S. C. A. Section 445) because *first,* this petitioner was not appointed administrator until March 7,

1932 (R. 3), which was after the time had expired July 3, 1931, in which to file claim so as to vest jurisdiction in the District Court under Section 19; and *second,* no "disagreement" existed in this case prior to July 3, 1931 (the last day suit could be filed under Section 19 of that act), as required by Section 19, which would confer jurisdiction upon the District Court.

The law is well settled that a "disagreement" is and has always been a jurisdictional prerequisite to the institution of suit under said Section 19 (*Pelkey* v. *United States,* 63 App. D. C. 211, 71 F. (2d) 221).

In the cases relied upon by the court below in its footnote 8 (R. 20) the remedy of filing suit existed at one time under Section 19 or other statute without suit being barred by the statute of limitations. In the instant case, however, at no time did this petitioner have the right to file suit under Section 19, and if the court has no jurisdiction, no *remedy* exists under which relief can be granted.

This Court in *Lynch* v. *U. S.,* 292 U. S. 571, at page 586 points out that Congress, in its repeal of laws pertaining to term insurance, mentioned on page 4 of respondent's Brief in Opposition, did not wish to deny the *remedy* if the repeal of the Constitutional right was held void under the Fifth Amendment. It further held that contracts of insurance such as this are property and as such are protected by the Fifth Amendment.

The cases mentioned in footnote 8 of the opinion of the court below have in effect been overruled by the decision of this Court in *Miguel* v. *McCarl,* 291 U. S. 442. In that case the court below, from whence the instant case comes, held that petitioner's claim for retired pay could only be determined in a suit instituted in the Court of Claims. This Court, however, in reversing the court below stated (291 U. S. at page 455):

> "We find no merit in the contention that * * * the suit cannot be maintained because petitioner has a remedy at law in the Court of Claims for his retired pay. *Smith* v. *Jackson,* 246 U. S. 388, 62 L. Ed. 788, 38 S. Ct. 353; (C. C. A. 5th) 241 Fed. 747, 760."

The petition filed herein asserted (R. 2) that the respondent should have paid benefits "in accordance with and in the amounts provided by such prior laws", as set forth in Section 35, Public 141, 73rd Congress (38 U. S. C. A. Section 511a). Where, as here, a claim for insurance benefits had been made prior to March 20, 1933, and the insurance had been found to have matured prior to that date, which finding was valid under the prior laws, the only authority conferred upon the Veterans' Administration by said statute is to determine the person or persons entitled to receive payment under said finding. It was provided by said act that the persons found to be so entitled "shall be paid such benefits in accordance with and in the amounts provided by *such prior laws.*" A review *"de novo"* was not authorized by this statute. Said statute amounts to a direction to the Respondent to pay the claim here sued upon, since every condition mentioned in said section existed in respect to said claim (R. 2).

Manifestly, therefore, the purpose of Section 35 of Public No. 141 is defeated where, as here, the Respondent disregards a finding, though valid under the legislation of Congress enacted prior to March 20, 1933, by unauthorizedly giving a retroactive effect to the legislation of Congress passed on and after said date, under which legislation he acted in overturning the prior administrative action.

True, by the Economy Act of March 20, 1933, it is provided:

> "Sec. 5. All decisions rendered by the Administrator of Veterans' Affairs under the provisions of this title, or the regulations issued pursuant thereto, shall be

> final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision."

In commenting upon this Act, which is similar to Section 5 of the World War Veterans' Act set forth on pages 12 and 13 of respondent's brief in opposition and mentioned (R. 19) by the court below, so far as finality of decision is concerned, this Court in *Lynch* v. *U. S.*, 292 U. S. 571, stated:

> "This section, as the Solicitor General concedes, does not relate to War Risk Insurance. It concerns only grants to veterans and their dependents—to pensions, compensation allowances and special privileges * * *."

Since this Court, in the *Lynch* case, *supra,* held that the attempted repeal by said Act of the laws granting or pertaining to yearly renewable term insurance was unconstitutional and void because such repeal would destroy the insured's contract right to the payment of his insurance, and that, under such circumstances, Congress could not have intended to repeal the right to sue on such contracts, the provisions of Section 5 of the Economy Act and Section 5 of the World War Veterans' Act, 1924, as amended, must be held to relate only to the reviewability by the courts of the Administrator's decisions on questions of compensation and other similar gratuitous allowances.

Hence, in the case at bar, the court has jurisdiction to inquire whether the Veterans' Administration misconstrued and misapplied the provisions of Section 35 of Public No. 141, 73rd Congress, in refusing to pay the amount of insurance the maturity of which had been determined *under prior existing laws.*

Respondent on page 7 of its Brief in Opposition states that the Insurance Claims Council was created by the Administrator and has no power except that conferred upon it by the Administrator. That is true and undisputed. However, when regulations have been once issued they become a part of the insurance contract.

Section 402 of the original War Risk Insurance Act of October 6, 1917 (40 Stat. 400) required the Director to "promptly determine upon and publish the full and exact terms and conditions of such contract of insurance." The first paragraph of the form of policy issued (which appears on page 39 of a brief filed by the Veterans Administration in this Court, October Term 1934, in the case of *Madison Miller, Jr.,* v. *United States,* No. 342) states:

> The United States of America, Treasury Department, Bureau of War Risk Insurance.
>
> "Under the authority granted by Congress in an act amending 'an act entitled "An act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department," approved September 2, 1914, and for other purposes,' approved October 6, 1917, and *subject in all respects* to the provisions of such act, of any amendments thereto, and *of all regulations thereunder, now in force or hereafter adopted, all of which, together with this policy, the application therefor, and the terms and conditions published under authority of the act, shall constitute the contract:*" (Italics supplied.)
>
> "* * * War risk policies, being contracts are property and create vested rights. The terms of these contracts are to be found in part in the policy, in part in the statutes under which they are issued and the regulations promulgated thereunder." *Lynch* v. *U. S.,* 292 U. S. 571, 577, 54 S. Ct. 840, 842, 78 L. Ed. 1434.

Authorized regulations pertaining to war risk insurance form part of the contract, and are binding on both the

government and the insured. They have the force of law and are binding on the courts. *White* v. *United States,* 270 U. S. 175, 70 L. Ed. 530, 46 S. Ct. 274; *United States* v. *Cole* (C. C. A. 6th), 45 F. (2d) 339; *Ross* v. *United States* (C. C. A. 5th) 49 F. (2d) 541; *Bartee* v. *United States* (C. C. A. 6th), 60 F. (2d) 247.

An administrative regulation is subject to the rules of law equally with a statute. When promulgated it must be followed by all. To hold otherwise would work an injustice and permit an administrative officer to render decisions according to his own whims.

Conclusion.

It is respectfully submitted that this Honorable Court should grant petitioner's application for a writ of certiorari.

Respectfully submitted,

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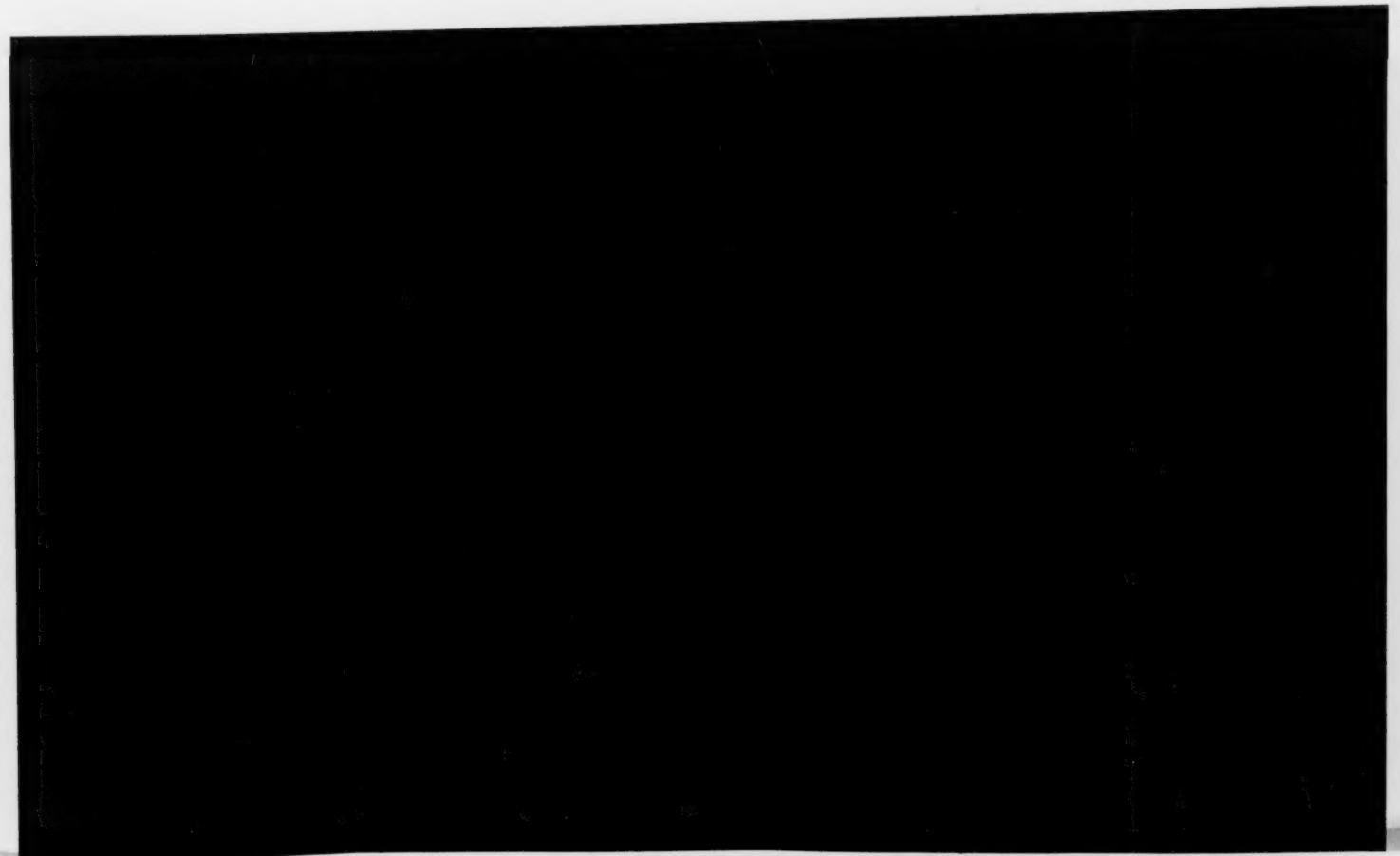
Attorney for Petitioner.



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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 509

FRANK MORGAN, ADMINISTRATOR OF THE ESTATE OF WILLIAM NICHOLAS, PETITIONER

v.

FRANK T. HINES, AS ADMINISTRATOR OF VETERANS' AFFAIRS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The judgment of the United States District Court for the District of Columbia was entered without opinion (R. 13). The opinion of the United States Court of Appeals for the District of Columbia (R. 17–21) is reported in 113 F. (2d) 849.

JURISDICTION

The judgment of the Court of Appeals was entered July 15, 1940 (R. 21–22). The petition for

a writ of certiorari was filed October 15, 1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Administrator of Veterans' Affairs has power to review the findings of the Insurance Claims Council of the United States Veterans' Administration on his own motion.

STATUTES AND REGULATIONS INVOLVED

The applicable portions of the statutes and regulations involved are set forth in the Appendix, *infra,* pp. 12–16.

STATEMENT

Petitioner is the administrator of the estate of William Nicholas, a World War veteran who died on September 4, 1926 (R. 10). He brought this suit in the United States District Court for the District of Columbia on July 3, 1935, seeking a writ of mandamus to compel the respondent to pay benefits under a contract of yearly renewable term insurance issued to Nicholas, on the ground that the Insurance Claims Council of the Veterans' Administration, in a final and unreviewable decision, had found the insurance to have matured by total permanent disability on December 5, 1918, and that, accordingly, it was the ministerial duty of the respondent to pay insurance benefits (R. 1, 2, 3, 12).

The suit was dismissed upon the respondent's demurrer to petitioner's amended replication (R. 13). The record consists entirely of the pleadings, including the petition (R. 1–4), answer (R. 5–8), replication (R. 8–12), and respondent's demurrer (R. 12). Petitioner appealed from the judgment dismissing his suit (R. 13–14) and the Court of Appeals for the District of Columbia unanimously affirmed that judgment (R. 21–22).

The record discloses that Nicholas had an insurance contract in the sum of $10,000 in force on December 5, 1918, when he was discharged from the United States Army on a surgeon's certificate of disability (R. 1). A claim for insurance benefits was filed in the Veterans' Administration by the petitioner on June 4, 1932 (R. 5, 9).[1] The Insurance Claims Council of the Veterans' Administration found, on October 27, 1932, that the insured was totally permanently disabled, within the meaning of his war risk insurance contract, on December 5, 1918 (R. 2).[2] No award under this decision was ever made (R. 6).

Petitioner's claim was pending in the Veterans' Administration on March 20, 1933, when the Economy Act (Act of March 20, 1933, c. 3, 48 Stat. 11) was approved. Section 17 of that

[1] No reference is made in the record or the petition for a writ of certiorari to any prior claim for insurance benefits.

[2] The Insurance Claims Council, for reasons not disclosed by the record, reviewed the case on September 25, 1933, and again on September 15, 1934, affirming its decision of October 27, 1932 (R. 10).

Act (U. S. C., Title 38, Section 717) provided for the repeal of "all laws granting or pertaining to yearly renewable term insurance". Subsequent to the decision of this Court in *Lynch* v. *United States* and *Wilner* v. *United States,* 292 U. S. 571,[3] holding unconstitutional the provisions of the Economy Act which had sought to cancel yearly renewable term insurance contracts, the respondent directed a reexamination of the petitioner's claim. Additional evidence was obtained and oral hearings were held before the Board of Veterans' Appeals, at which petitioner was represented. The respondent determined that the evidence did not warrant a finding that Nicholas had been totally permanently disabled within the meaning of his policy and during its life, and accordingly denied petitioner's claim (R. 7).

ARGUMENT

Petitioner contends that the finding by the Insurance Claims Council of the Veterans' Administration that the decedent was totally permanently disabled on December 5, 1918, conferred upon him a vested property right. He asserts that under the regulations of the Veterans' Administration the Administrator was powerless to review a finding by the Council except upon an appeal by the claimant, and that the attempt on the part of the Administrator of Veterans' Affairs to review on his own motion the finding in ques-

[3] Decided June 4, 1934.

tion was without authority and void.[4] He urges that the respondent had only the ministerial duty of paying the petitioner's insurance claim on the finding by the Council and hence that he should have been granted a writ requiring the respondent to perform this duty. All of these contentions were considered and, we submit, properly rejected by the court below.[5]

As the court below points out in its opinion (R. 18), proper administration of the World War Veterans' Act requires the possession by the Administrator of the power to reexamine the findings of his

---

[4] Petitioner does not contend that the Administrator denied him an opportunity to be heard in connection with the review of the decision of the Insurance Claims Council, or that the Administrator's finding that the insured was not totally permanently disabled was not warranted by the evidence before the Administrator.

[5] The petitioner complains (Pet. pp. 12–13) because the court below, in a footnote of its opinion (Second Paragraph of Footnote 4, R. 18–19), considered the affirmative allegations in the respondent's answer to the effect that the Administrator gave petitioner due notice and opportunity to be heard. Since no question is raised as to the adequacy of the hearing but only as to the Administrator's power to review at all on his own motion, it is immaterial whether the affirmative allegations of the answer should have been ignored. It may be observed, however, that those allegations were not denied in petitioner's replication and the court was at liberty to accept them as true. Respondent was compelled to answer the rule to show cause, and could not demur to the petition. *United States ex rel. West* v. *Hitchcock*, 19 App. D. C. 333. The replication failed to challenge these affirmative allegations, and a demurrer in such circumstances brings the entire record before the court. *United States* v. *Gurney*, 4 Cranch 333, 341.

subordinates on his own motion. *Knight* v. *United States Land Association,* 142 U. S. 161, 177–178; *Orchard* v. *Alexander,* 157 U. S. 372, 385. If the Administrator does not have this authority it would be impossible for him to do justice by reversing on his own motion an erroneous decision adverse to a claimant.[6] The court below correctly found the necessary authority to have been conferred upon the Administrator in the broad language of Section 5 of the World War Veterans' Act (Appendix, *infra,* p. 12), which provides:

> The director, [administrator] * * * shall administer, execute, and enforce the provisions of this Act * * * and shall decide all questions arising under this Act; and all decisions of questions of fact and law affecting any claimant * * * shall be conclusive except as otherwise provided herein. All officers and employees of the bureau shall perform such duties as may be assigned them by the director. All official acts performed by such officers or employees specially designated therefor by the

---

[6] As was said by the court below in Footnote 2 of its opinion (R. 17):

"It should be noted that acceptance of this [petitioner's] argument would preclude the Administrator from reviewing, on his own motion, decisions adverse to the claimant as well as those favorable to him. It would seem hard to say the Administrator does not have sufficient authority to allow on his own motion a claim for compensation, pension, vocational rehabilitation, or insurance benefits erroneously denied by his subordinates."

> director shall have the same force and effect as though performed by the director in person. * * *

The Insurance Claims Council was created by the Administrator and has no power except that conferred upon it by the Administrator. The Council acts for him and, within the limitation of the authority delegated to it, its action is the action of the Administrator. Implicit in the authority to act is the authority to correct an action. See *United States* v. *Bentley,* 107 F. (2d) 382, 383 (C. C. A. 2d), in which it was held that a statute making a decision of the Secretary of War final and conclusive did not prevent the Secretary from correcting his own decision.

Petitioner places principal reliance upon a regulation (Regulation 3204, Appendix, *infra,* p. 15) containing provisions for a review by the Administrator of decisions of the Insurance Claims Council upon an appeal by the claimant, but containing no provisions for review of such decisions by the Administrator on his own motion. It may well be doubted that the Administrator could divest himself of the authority to correct an erroneous decision of his subordinates, but in any event, as the court below stated (R. 19, Footnote 5), the regulation in question—

> clearly does not purport to deal with the finality of the Council's decisions favorable to the claimant nor does it detract from the power of the Administrator to review such

> decisions on his own motion. Moreover, we think the finality of adverse decisions under this regulation is finality only in respect to the claimant and does not purport to bar the Administrator from reviewing such decisions on his own motion.

Petitioner seeks (Br. 10–11) to read into Section 2 of the Act of July 3, 1930, c. 863, 46 Stat. 1016 (U. S. C., Title 38, Section 11 (a)), providing for the consolidation in the Veterans' Administration of the Veterans' Bureau and other agencies dealing with veterans' affairs, a limitation upon the Administrator's right to review in the absence of an appeal by a claimant. That section provides that "All final decisions or orders of any division, bureau, or board in the Veterans' Administration shall be subject to review, on appeal, by such administrator." As the court below properly held, this language was "merely confirmatory of the final responsibility for administration of all Veterans' Affairs earlier lodged in the Administrator [then Director] * * * by Section 5 of the World War Veterans' Act" (R. 18). This is made clear by the provision in the same section of the Consolidation Act that "Upon the establishment of such Veterans' Administration all the functions, powers, and duties * * * conferred by law upon * * * the Director of the United States Veterans' Bureau are hereby conferred upon and vested in the Administrator of Veterans' Affairs."

Petitioner refers to the fact that on March 12, 1934, the Administrator by regulation made provision for appeal by officials of the Veterans' Administration (Br. pp. 11–12). Since, however, the Administrator, by virtue of the broad statutory grant of power in Section 5 of the World War Veterans' Act, possessed authority to review any finding of the Insurance Claims Council on his own motion, the exercise of this authority was not at all dependent upon the existence of regulations prescribing a procedure for it.[7]

The Administrator having at all times possessed authority to review any finding of the Council on his own motion, it cannot be said that the exercise of this authority in the instant case involved

[7] While the Administrator, acting under Section 35 of the Independent Offices Appropriation Act of 1934 (Appendix, *infra*, pp. 14–15), issued instructions on April 11, 1934 (Appendix, *infra*, p. 16), for the reference to him for consideration, without any application, of all claims "which would be otherwise proper for payment except for the provisions" of the Economy Act, provided that certain conditions had been complied with, the record does not disclose that he reviewed the finding of the Insurance Claims Council under this procedure. The Administrator, in his answer to the petition for mandamus, relied specifically for authority to review such finding upon "the provisions of the World War Veterans' Act, 1924, as amended, which gives him authority to administer, execute and enforce the provisions of said Act and to decide all questions arising thereunder" (R. 6–7). Since this authority amply supported his action in the instant case, it is unnecessary to rely upon other possible authority.

any modification of the procedure in effect at the time the Council rendered its decision.[8]

Petitioner's suit appears to be merely an effort on his part to escape the bar of limitations which had fallen prior to the filing in the Veterans' Administration of the claim upon which he seeks to recover as a result of this proceeding. Section 19 of the World War Veterans' Act (Appendix, *infra,* pp. 13–14), provides that in the event of disagreement as to claim under a contract of insurance, between the Veterans' Administration and a claimant, an action may be brought against the United States within six years after the right accrued for which the claim is made, or within one year after July 3, 1930, whichever is the later date. When the Administrator found that the insured was not totally permanently disabled while his insurance was in force and denied petitioner's claim (R. 7), petitioner, except for its belated assertion, could have brought a suit upon that claim under the authority of Section 19, since that section provides a suspension of limitations "for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director." Petitioner may not maintain a suit under the authority of that section only because his claim was first filed in the Veterans' Adminis-

[8] Even if it had, however, such a change in administrative procedure is not violative of the Fifth Amendment. *Paramino Lumber Co.* v. *Marshall*, 309 U. S. 370, 378–379.

tration in June 1932, more than one year after July 3, 1930, and more than six years after the right accrued. *United States* v. *Towery,* 306 U. S. 324, rehearing denied, 306 U. S. 668. The court below properly held that in the circumstances of this case the petitioner's exclusive remedy, although lost to him by the belated assertion of claim, was a suit under the authority of Section 19. Certainly petitioner's failure to bring an action under Section 19, within the time prescribed therein, provides no basis for granting relief in the instant proceeding. *United States Board of Tax Appeals* v. *McCandless,* 26 F. (2d) 1000 (App. D. C.).

CONCLUSION

The decision below is correct. There exists no conflict of decisions. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

FRANCIS BIDDLE,
Solicitor General.

FRANCIS M. SHEA,
Assistant Attorney General.

PAUL A. SWEENEY,
Special Assistant to the Attorney General.

W. MARVIN SMITH,
Attorney.

JOHN M. GEORGE,
Attorney, Veterans' Administration,
Of Counsel.

NOVEMBER 1940.

APPENDIX

The World War Veterans' Act of 1924 as amended by the Act of July 3, 1930, c. 849, 46 Stat. 991, 992–993 (U. S. C., Title 38, Secs. 426, 445), provides in part:

> "SEC. 5. The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for that purpose shall have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purposes, and shall decide all questions arising under this Act; and all decisions of questions of fact and law affecting any claimant to the benefits of Titles II, III, or IV of this Act shall be conclusive except as otherwise provided herein. All officers and employees of the bureau shall perform such duties as may be assigned them by the director. All official acts performed by such officers or employees specially designated therefor by the director shall have the same force and effect as though performed by the director in person. Wherever under any provision or provisions of the Act regulations are directed or authorized to be made, such regulations, unless the context otherwise requires, shall or may be made by the director. The director shall adopt reasonable and proper rules to govern the procedure of the divisions and to

regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits of compensation, insurance, vocational training, or maintenance and support allowance provided for in this Act, the forms of application of those claiming to be entitled to such benefits, the methods of making investigations and medical examinations, and the manner and form of adjudications and awards: *Provided,* That regulations relating to the nature and extent of the proofs and evidence shall provide that due regard shall be given to lay and other evidence not of a medical nature."

"SEC. 19. In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the district court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. The procedure in such suits shall be the same as that provided in sections 5 and 6 of the Act entitled 'An Act to provide for the bringing of suits against the Government of the United States,' approved March 3, 1887, and section 10 thereof so far as applicable * * *.

"No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year

after the date of approval of this amendatory Act, whichever is the later date, and no suit on United States Government life (converted) insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided,* That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded: *Provided, further,* That this limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director * * *.

"The term 'claim' as used in this section, means any writing which alleges permanent and total disability at a time when the contract of insurance was in force, or which uses words showing an intention to claim insurance benefits and the term 'disagreement' means a denial of the claim by the director or some one acting in his name on an appeal to the director. This section, as amended, with the exception of this paragraph, shall apply to all suits now pending against the United States under the provisions of the War Risk Insurance Act, as amended, or the World War Veterans' Act, 1924, as amended."

Section 35 of the Independent Offices Appropriation Act of 1935, c. 102, 48 Stat. 509, 526–527 (U. S. C., Title 38, Sec. 511a) provides:

That notwithstanding the provisions of section 17 of title I of an Act entitled "An Act to maintain the credit of the United States Government," approved March 20, 1933, and section 20 of an Act entitled "An

Act making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices, for the fiscal year ending June 30, 1934, and for other purposes", approved June 16, 1933, any claim for yearly renewable term insurance under the provisions of laws repealed by said section 17, wherein claim was duly filed prior to March 20, 1933, and on which maturity of the insurance contract had been determined by the Veterans' Administration prior to March 20, 1933, and where payments could not be made because of the provisions of the Act of March 20, 1933, or under the provisions of the Act of June 16, 1933, may be adjudicated by the Veterans' Administration, and any person found entitled to yearly renewable term insurance benefits claimed shall be paid such benefits in accordance with and in the amounts provided by such prior laws.

REGULATIONS

On November 1, 1931, the following regulation was promulgated by the Administrator of Veterans' Affairs:

3204. APPEAL FROM DECISION BY INSURANCE CLAIMS COUNCIL. Where the insurance claims council finds that permanent and total disability does not exist as alleged, such denial shall be final. However, the veteran or his representative shall have the right of appeal to the administrator from any finding made pursuant to the authority contained in sections 3200 and 3203 providing such appeal be exercised within sixty days from the date of receipt of notice of the final action of the council. Such appeal

must be in writing and otherwise comply with the regulations governing appeals to the administrator.

The following instructions were issued on April 11, 1934, by the Administrator of Veterans' Affairs:

> The following instructions are issued governing adjudication of yearly renewable term insurance claims under Section 35, Public, No. 141, 73d Congress (38 U. S. C. 511a):
>
> Without further filing of application thereon there will be presented to me for consideration, together with a brief of the facts and recommendation, all claims which would be otherwise proper for payment except for the provisions of Section 17, Public, No. 2, 73d Congress, provided that the following conditions have been complied with:
>
> 1. Claim for insurance has been filed prior to March 20, 1933.
>
> 2. Maturity of the insurance contract had been determined by the Veterans' Administration prior to March 20, 1933.
>
> The phrase "on which maturity of the insurance contract had been determined by the Veterans' Administration" as used in Section 35, Public, No. 141, 73d Congress, will mean that final action has been taken by an employee or board of competent jurisdiction of the Veterans' Administration, which action is not subject to review or further approval except on appeal, definitely determining that the insured died or became permanently and totally disabled according to the conditions of the insurance contract.

U. S. GOVERNMENT PRINTING OFFICE: 1940